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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their
capacities as Trustees of the LABORERS
HEALTH AND WELFARE TRUST FUND
FOR NORTHERN CALIFORNIA;
LABORERS VACATION-HOLIDAY TRUST
FUND FOR NORTHERN CALIFORNIA;
LABORERS PENSION TRUST FUND FOR
NORTHERN CALIFORNIA; and LABORERS
TRAINING AND RETRAINING TRUST
FUND FOR NORTHERN CALIFORNIA,

Plaintiffs,

v.

MANIGLIA LANDSCAPE, INC., a California
Corporation; MANIGLIA LANDSCAPE
SERVICES, INC., a California Corporation;
COHEN LANDSCAPE SERVICES, INC., a
California Corporation; THE CELTIS GROUP,
INC., a California Corporation; and DOES 1
THROUGH 10, inclusive,

Defendants.

No.

**COMPLAINT FOR BREACH OF
CONTRACT, DAMAGES, AND AUDIT
(ERISA 29 U.S.C. §1001, ET SEQ., 29
U.S.C. §185)**

1 Plaintiffs complain of Defendants, and for cause of action allege:

2 **JURISDICTION AND INTRADISTRICT ASSIGNMENT**

3 I.

4 This action arises under and is brought pursuant to section 502 of the Employee
5 Retirement Income Security Act, as amended (ERISA) (29 U.S.C. § 1132), and section 301 of the
6 Labor Management Relations Act (LMRA) (29 U.S.C. § 185). Venue properly lies in this district
7 court since contributions are due and payable in the County of San Francisco. Therefore,
8 intradistrict venue is proper.

9 **PARTIES**

10 II.

11 At all times material herein, Plaintiffs The Board of Trustees were Trustees of the
12 Laborers Health and Welfare Trust Fund for Northern California (hereinafter “Welfare Fund”);
13 Laborers Vacation-Holiday Trust Fund for Northern California (hereinafter “Vacation Fund”);
14 Laborers Pension Trust Fund for Northern California (hereinafter “Pension Fund”); and Laborers
15 Training and Retraining Trust Fund for Northern California (hereinafter “Training Fund”,
16 together with the Welfare Fund, Vacation Fund, and Pension Fund, collectively referred to as
17 “Trust Funds”). At all times material herein, each of the above-named Trust Funds was, and now
18 is, an employee benefit plan created by a written Trust Agreement subject to and pursuant to
19 section 302 of the Labor Management Relations Act (29 U.S.C. § 186), and a multi-employer
20 employee benefit plan within the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C. §§
21 1002, 1003 and 1132). Each of the above-named Trust Funds is administered by a Board of
22 Trustees which may bring this action in the name of the Trust Funds pursuant to the express
23 provisions of the Trust Agreements. All of the above named Trust Funds and their respective
24 Board of Trustees shall hereinafter be designated collectively as “Plaintiffs”.

25 III.

26 At all times material herein, Maniglia Landscape, Inc., a California Corporation; Maniglia
27 Landscape Services, Inc., a California Corporation; Cohen Landscape Services, Inc.; and The
28 Celtis Group, Inc., a California Corporation (hereinafter referred to as “Defendants”), have been

1 employers within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C. §§ 1002(5),
 2 1145) and employers in an industry affecting commerce within the meaning of section 301 of the
 3 LMRA (29 U.S.C. § 185).

4 Plaintiffs are informed and believe and thereupon allege that Defendants Maniglia
 5 Landscape, Inc.; Maniglia Landscape Services, Inc.; Cohen Landscape Services, Inc.; and The
 6 Celtis Group, Inc., and each of them are alter-egos; interrelated; overlapping; under common
 7 management, control, ownership, and operation; successors; or a single employer as contemplated
 8 in the applicable labor agreements and therefore, Defendants, and each of them, are bound to the
 9 applicable labor agreements.

10 Defendants, DOES 1 through 10, inclusive, are sued herein under such fictitious names,
 11 their true names and capacities, whether individual, corporate, associate, or otherwise being
 12 unknown to Plaintiffs, who ask leave to amend this Complaint to insert their true names and
 13 capacities when they are ascertained.

14 **ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

15 IV.

16 At all relevant times, Defendants were signatory and bound to written collective
 17 bargaining agreements with the Northern California District Council of Laborers (hereinafter
 18 "Union"), a labor organization within the meaning of section 301 of the Labor Management
 19 Relations Act (29 U.S.C. § 185). Defendants became subject to all the terms and conditions of
 20 the Associated General Contractors Laborers Master Agreements and the Association of
 21 Construction Employers Master Agreement (hereinafter "Master Agreements") by virtue of
 22 signing a Memorandum of Agreements (hereinafter "Memorandum Agreements") with the
 23 Union, which incorporated by reference the Master Agreements. Defendants were also signatory
 24 and bound to the Landscape/Irrigation Technicians I, II, III, and IV Agreement (hereinafter
 25 "Landscape/ Irrigation Agreement"). A true and correct copy of the Associated General
 26 Contractors Master Agreement for the period of 2006 through 2010 is attached hereto as Exhibit
 27 "A". True and correct copies of the subsequent Associated General Contractors Master
 28 Agreements for the periods of 2010 through 2012, and 2012 through 2015 are attached hereto as

Exhibit "B" and Exhibit "C". A true and correct copy of the Association of Construction Employers Master Agreement for the period of 2012 through 2015 is attached hereto as Exhibit "D", and true and correct copies of the Memorandum Agreements and the Landscape/Irrigation Agreement are attached hereto as Exhibit "E", Exhibit "F", and Exhibit "G", all of which are incorporated by reference herein. The Master Agreements by their terms incorporate the various Trust Agreements establishing each of the Trust Funds. By said Master Agreements, Defendants promised that they would contribute and pay to Plaintiffs the hourly amounts required by said Agreements for each hour paid for or worked by any of their employees who performed any work covered by said Agreements, and that they would be subject to and bound by all of the terms, provisions, and conditions of the Trust Agreements as incorporated by the terms of the Master Agreement.

V.

The above-mentioned Agreements provide for prompt payment of all employer contributions to the various Trust Funds and provide for the payment of interest on all delinquent contributions, attorneys' fees, and other collection costs, and for the audit of the signatory employer or employers' books and records in order to permit the Plaintiffs to ascertain whether all fringe benefit contributions have been timely paid as required by the applicable labor agreements and law.

FIRST CLAIM FOR RELIEF **(BREACH OF CONTRACT)**

VI.

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

VII.

Pursuant to the Master Agreement and the Trust Agreements, audits of the books and records of Defendants for the periods of January 2011 to December 2012, and January 2013 to March 2014, were conducted, which revealed that fringe benefit contributions to the Trust Funds have not been submitted as required by said agreements.

VIII.

Demands have been made of Defendants for payment of the amounts determined to be

1 due and owing pursuant to the audits, and Defendants have refused to pay such amounts and there
2 is now due, owing and unpaid to Plaintiff Trust Funds from Defendants, fringe benefits
3 contributions in the amount of \$1,022,053.87.

4 IX.

5 Plaintiffs are the intended third-party beneficiaries of the Agreement, but Trust Fund
6 contribution delinquencies are excluded from the arbitration provisions of the Agreement.

7 X.

8 Plaintiffs have complied with all conditions on their part to be performed under the terms
9 of the applicable agreements.

10 XI.

11 Plaintiffs are entitled to reasonable attorneys' fees, interest, and other reasonable expenses
12 incurred in connection with this matter due to Defendants' failure and refusal to pay all fringe
13 benefit contributions due and owing pursuant to the terms of the applicable Labor Agreements,
14 Trust Agreements, and ERISA section 502(g)(2) (29 U.S.C. § 1132(g)(2)).

15 **SECOND CLAIM FOR RELIEF**
16 **(ACTUAL DAMAGES FOR BREACH OF CONTRACT)**

17 XII.

18 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

19 XIII.

20 Defendants have failed, neglected and refused to make timely fringe benefit contributions
21 as required by the applicable Master Agreement and Trust Agreements, and have caused
22 Plaintiffs actual damages to be proven at the time of trial.

23 **THIRD CLAIM FOR RELIEF**
24 **(AUDIT)**

XIV.

25 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

26 XV.

27 Plaintiffs believe that additional amounts may be due and owing and also pray for an audit
28 to determine same.

WHEREFORE, Plaintiffs pray judgment against Defendants, Maniglia Landscape, Inc.; Maniglia Landscape Services, Inc.; Cohen Landscape Services, Inc.; and The Celtis Group, Inc., as follows:

1. That Defendants be ordered to pay contributions in the amount of \$1,022,053.87, plus interest thereon;

2. That Defendants be ordered to pay actual damages in an amount to be proven at the time of trial;

3. That this Court issue an Order directing and permanently enjoining Defendants to submit to the Trust Funds, all reports and contributions due and owing by Defendants, plus interest, attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

4. That this Court issue an Order permanently enjoining Defendants for so long as it remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely submit required monthly contributions reports and payments as required by the terms of the collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

5. That Defendants be ordered to pay attorney's fees;

6. That Defendants be ordered to pay costs of suit herein;

7. That this Court grant such further relief as this Court deems just and proper; and

8. That this Court retain jurisdiction of this matter to enforce the Order compelling an Audit and payment of all amount found due and owing.

Dated: August 6, 2014

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